

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

APR 26 2002 JS

MICHAEL N. MILBY, CLERK OF COURT

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| MARK NEWBY, et al., | : | |
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| | : | |
| <i>Plaintiffs,</i> | : | |
| | : | |
| v. | : | CIVIL ACTION NO. <u>H-01-3624</u> |
| | : | AND CONSOLIDATED CASES |
| ENRON CORPORATION, et al., | : | |
| | : | |
| <i>Defendants,</i> | : | |
| ----- | : | |
| AMERICAN NATIONAL INSURANCE CO., | : | |
| et al, | : | |
| | : | CIVIL ACTION NO: G-02-0084 |
| <i>Plaintiffs,</i> | : | |
| | : | |
| v. | : | |
| | : | |
| ARTHUR ANDERSEN, L.L.P., et al., | : | |
| | : | |
| <i>Defendants.</i> | : | |
| ----- | X | |

**ARTHUR ANDERSEN LLP'S EMERGENCY MOTION
(JOINED IN PART BY THE LEAD PLAINTIFF)
TO CONTINUE HEARING CURRENTLY SET FOR APRIL 29, 2002**

Arthur Andersen LLP ("Andersen") and the Regents of the University of California, Lead Plaintiff in the *Newby* case (the "Regents") jointly file this motion to request that the hearing currently set by this Court for April 29, at 9:00 a.m. on the Regents' *Ex Parte* Application for a Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction to Enjoin Defendant

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Andersen's Breakup ("Lead Plaintiff's Application") be continued until May 2, 2002, at 2:00 p.m. or such other date thereafter as may be convenient to the Court. This joint motion is made jointly on behalf of the Regents and Andersen in light of the ongoing discussions and developments in the mediation between and among them and Lead Plaintiff in the *Tittle* case.

Andersen also files this motion to continue the hearing currently scheduled for the same date and time on American National Insurance Company, et al.'s Emergency Motion for Temporary Injunction and Request for Hearing ("American National Motion"), and in support thereof would show:

A. Background

On or about March 28, 2002, American National Insurance Co, et al. ("American National") moved for the entry of a temporary restraining order enjoining Andersen from "(1) transferring any assets to foreign subsidiaries or affiliates; (2) releasing any foreign subsidiaries or affiliates from any obligations to [Andersen]; and (3) releasing from non-compete agreements any partners, employees or other agents subject to non-compete agreements with Andersen, without the express permission of the Court." See American National Motion (Docket No. 422).

Andersen responded to the American National Motion on April 5, 2002. On that same date, the Regents filed Lead Plaintiff's Application seeking a temporary restraining order, which subsumed and broadened the relief sought by American National. The Regents seek an order to "preserve the *status quo* of defendants [Arthur] Andersen LLP, Andersen Worldwide Cooperative, Switzerland . . . and Andersen's member firms and affiliates ([defined] collectively, [as] 'Andersen') and enjoining Andersen's efforts to dissolve or spin-off divisions or businesses; and (2) an Order to Show Cause why a preliminary injunction should not issue." See Lead Plaintiff's Application.

On April 8, 2002, the parties appeared before the Court for argument. At the suggestion of the Regents and the *Tittle* Lead Plaintiff and with the concurrence of all parties, that hearing was adjourned until April 17 given the progress and developments in the mediation between Andersen, the Regents and the *Tittle* Lead Plaintiffs.

On April 15, 2002, because of continued progress and developments in the mediation, Andersen and the Regents jointly moved this Court for an order continuing the hearing until April 22, 2002 or such dates as was set by the Court. American National objected to the continuance.

On April 16, 2002, the Court granted the relief sought by Andersen and the Regents and overruled American National's objections to a continuance. The Court's order requires Andersen to file its papers in response to the Regent's motion on April 22, 2002, and continues the hearing until April 24, 2002. The Order further finds that:

“The Court believes that great harm could be caused by holding the hearing on April 17, before the conclusion of ongoing settlement negotiations. The Court further believes that this danger outweighs any danger to plaintiffs American National Insurance Company, et al. in postponing that hearing to a date certain in the future.” Order dated April 16, 2002.

On April 23, 2002, upon the further joint application of Andersen and the Regents, the Court entered an order continuing the hearing until April 29, 2002. In the interim, the Court has filed a response to the Regents' motion and has submitted the affidavit of Bryan Marcal in opposition to the motion of the Lead Plaintiff's Application and the American National Motion.

B. Joint Motion of Andersen and Lead Plaintiff

As indicated in today's motion, it continues to be the considered view of the Regents and Andersen that the same considerations that warranted the earlier continuances warrant a further continuation of the hearing. Andersen and the Regents jointly request that the hearing currently set by this Court for April 29, 2002, be continued until May 2, 2002 at 2:00 p.m. or such other date thereafter as may be convenient to the Court.

C. Andersen's Motion to Continue American National's Motion

The Court should also continue any hearing resulting from American National's motion. As was noted in Andersen's prior motion for a continuance of the American National hearing, allowing the hearing to go forward solely with respect to the relief sought by American National, would create the very same harm to the settlement negotiation process that the Regents and Andersen believe is best avoided and that the Court has previously recognized could result from such a hearing.

In addition, requiring Andersen to proceed with a hearing on American National's motion, while the Regents' motion for similar relief is continued, would constitute a waste of judicial resources as well as a waste of Andersen's resources. Andersen should not be required to assume the costs and burdens of responding to what are virtually two identical motions on two different schedules. Nor should the Court be required to address this issue on two different schedules.

Andersen does not repeat, but incorporates by reference the other grounds set forth in its April 15, 2002 motion for a continuance.

D. Emergency Relief Sought

Pursuant to S.D. Tex. Local R. 7.8, Andersen respectfully asks the Court to decide this motion on an emergency basis. Under S.D. Tex. Local R. 7.3, this motion would ordinarily be submitted on twenty days from today. In light of the fact that submission on that date would moot this motion and that Andersen's papers are required to be filed today in anticipation of the April 24 hearing, Andersen and the Regents respectfully request that the Court rule on this motion prior to the close of business on April 26, 2002.

Respectfully submitted,



Rusty Hardin
State Bar No. 08972800
1201 Louisiana, Suite 3300
Houston, Texas 77002-5809
(713) 652-9000
(713) 652-9800 (fax)
Attorney-in-Charge for
Defendant Arthur Anderson LLP

OF COUNSEL

Andrew Ramzel
State Bar No. 00784184
S.D. Tex. I.D. No. 18269
RUSTY HARDIN & ASSOCIATES, P.C.

Michael Carroll
Daniel Kolb
Sharon Katz
DAVIS POLK & WARDWELL
450 Lexington Avenue
New York, New York 10017
(212) 450-4000
(212) 450-4800 (fax)

CERTIFICATE OF CONFERENCE

I hereby certify that on this 26th day of April, 2002, I spoke with Andrew Mytelka, counsel for American National Insurance Co., by telephone. Mr. Mytelka told me that American National is opposed to the relief sought in this motion.

Sharon Katz by
Sharon Katz *Andrew Ramzel with permission.*

CERTIFICATE OF SERVICE

I hereby certify that on this 26 day of April, 2002, the foregoing pleading was served pursuant to the Court's April 5, 2002 Order.

Andrew Ramzel
Andrew Ramzel